IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948.
No. 233

JOAN BRODEL (Professionally known as Joan Leslie),
*Petitioner,*

*vs.*

WARNER BROS. PICTURES, INC. (a corporation),
*Respondent.*

## ANSWER TO PETITION FOR REHEARING.

Petitioner Joan Brodel has asked for a rehearing by this Honorable Court upon her application for writ of certiorari, denied by this Court on October 18, 1948. Her sole ground is the assertion that the cause had become moot and that the Supreme Court of the State of California had no power to pass upon the moot question, and hence presumably had no power to render its decision on May 3, 1948. [Tr. 14.]

The precise point and the facts were brought to the attention of the Supreme Court of the State of California informally by letters and affidavits prior to the date of decision. After decision petitioner Brodel petitioned that court for a rehearing upon precisely the same arguments. Rehearing was denied May 27, 1948.

The position of respondent Warner Bros. Pictures, Inc. is as follows:

(a) The decision in the State court is not final, but the cause has been remanded for further proceedings in the trial court as shown by the prior brief herein. The expiration of the contract could not make the appeal moot, but if such were the case there is ample opportunity for petitioner to make such point in the trial court.

(b) The precise assertion was made before the Supreme Court of the State of California by petitioner upon affidavit and petition and was decided adversely to petitioner. (Pet. for Rehearing pp. 6-7.) The question is primarily one of fact as to whether proper and timely notices were given and this court does not review the decision of a state court on an issue of fact, even if the record before this court were sufficient to enable such review to be made. However, petitioner's record before this court does not include the contract which is the basis of the action. The complaint has been brought up [R. 1-12] but not the exhibit to the complaint, such exhibit being a copy of the contract in question. Petitioner has also failed to bring before this court the affidavits and other matters presented to the state court in connection with the issue. The new affidavits, set forth as Appendix A and Appendix B respectively to the petition for rehearing, merely state petitioner's own views, which do not include any mention of the effect of paragraph 23 of the contract as referred to in the letter dated May 7, 1946 and included as Appendix C.

(c) As a matter of fact the contract has not expired, as is indicated, if not proved, by the actual record.

A.

The compiaint herein is for breach of contract. The prayer [Tr. 11] is for injunctive relief to prevent violation of contract by rendering services for others in breach thereof, but it is also [Tr. 12] for a declaration of the respective rights and duties under the contract and for all further relief. It is self-evident that an action for breach can be maintained after expiration of a contract. Most actions for damages for breach of a contract are brought after its termination. Injunction is permissible if an award of damages will not constitute adequate compensation for the injury, but the fact that damages are not adequate compensation for the injury has never been held to prevent the award of whatever damages may be proved. The Supreme Court of the State of California in its decision, since the cause came up on demurrer to a complaint, stated [Tr. 23-24]:

> "If plaintiff's allegations state a cause of action and are supported by proof the court may grant it any relief consistent with its cause of action."

B.

Though it is obvious mere termination of the contract, as claimed to exist by petitioner here, would not make the cause moot or the action of the Supreme Court of the State of California improper, it is equally apparent that the petitioner's assertion as to the fact is untenable. Her precise assertion is that a notice of exercise of an option should have been given to petitioner on or before thirty days prior to March 30, 1948. Petitioner prints as Appendix C a copy of a letter to her dated May 7, 1946, and as Appendix D copy of a letter to her dated February 5, 1947.

The complaint itself showed [R. 3, par. VI(c)] an initial period of fifty-two weeks commencing March 30, 1942. It also showed [R. 4-5] that the contract included six additional periods of fifty-two weeks each at varying rates of salary, each of such periods to commence upon the expiration of the immediately preceding period, and each of such optional extensions to be exercised at least thirty days prior to the expiration of the immediately preceding period.

Prior to February 13, 1946, the respondent had exercised three consecutive options of extension, which in the aggregate would have expired March 25, 1946. [R. 6, par. VII.] On February 13, 1946, respondent exercised its option for the fourth of the available six optional periods. Such fourth optional period would, therefore, extend from March 25, 1946, for a period of fifty-two weeks, or until March 23, 1947.

The purported disaffirmance of petitioner Brodel occurred February 20, 1946 [R. 7], or one week after the exercise by respondent of its fourth option. After such disaffirmance petitioner Brodel has been continuously in default, and because of the existence of such default respondent delivered to her the letter dated May 7, 1946 [Appendix C, Pet. for Rehearing], notifying petitioner, so far as is here relevant, that the respondent thereby exercised its right to extend the contract and the current term thereof and all of its provisions for the period of default "in accordance with the provisions of paragraph 23" of the existing contract. As noted, petitioner has not made such contract as part of the record, but for the information of the court, paragraph 23 thereof provides that in the event of a default by the artist her compensation would cease

until such default is cured, and that at the option of the respondent the contract, including the then current term and all its provisions including the time for exercise of any and all subsequent options, would be extended for such period of default, which extension, however, was restricted to a maximum of twelve months for any given default.

Since petitioner was and has been continuously in default at all times since, there was an extension for the maximum permissible period, which maximum additional period of twelve months would, therefore, be added on to the then current term, to-wit, the fourth optional extension. Without extension such fourth period would have terminated March 23, 1947, but under the above circumstances it would not and could not expire prior to March 23, 1948.

Well within the permissible time and more than thirty days before such critical date the next succeeding option was exercised by the letter appearing as Appendix D and dated February 5, 1947, which is applicable to the fifth extended period. The period now in force under such contract, therefore, and as to which the letter of February 5, 1947 is applicable, extends from March 24, 1948 through March 22, 1949.

Petitioner, before the Supreme Court of the State of California and here, completely disregards the fact of the extension attributable to her own deliberate default and which was brought into effect by the letter of May 7, 1946 because of that default.

It may be noted that the option letter of February 5, 1947 [Appendix D] was given long prior to the time it became necessary. It could have been given at any

time up to and including February 23, 1948. There is no contractual restriction as to how early such notice of exercise of option may be given. The only restriction is that it may not be given later than thirty days prior to the expiration of the preceding period. The dates given in the petition for rehearing herein vary slightly from those herein set forth due to the fact that petitioner apparently bases her calculations upon period of one year each, while actually the contract periods are fifty-two weeks.

The contract herein involved cannot be considered as terminated prior to March 22, 1949, and will not then terminate unless respondent fails to exercise its option for the sixth extended period under the contract prior thereto. That time has not yet arrived. The cause is certainly not moot because of any asserted termination. It would not be moot in any case, in as much as there is no final judgment involved but the case rests upon the original complaint under which the respondent, as the plaintiff therein, is entitled to such relief as it can at the proper time justify by proof.

Respectfully submitted,

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